IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Civil Misc. Writ Petition No. 2795(M/S)/2001
Executive Engineer Garhwal Jal Sansthan,
….Petitioners.
Dehradun and another
Vs.
Virendra Singh Chauhan and others
…Respondents.

AND
Civil Misc. Writ Petition No. 2183(M/S)/2001
Executive Engineer Garhwal Jal Sansthan,
Dehradun and another
…Petitioners.
Vs.
Virendra Singh Chauhan and others
…Respondents.

AND

Civil Misc. Writ Petition No. 1585 (M/S)/2001
Virendra Singh Chauhan and others …Petitioners.
Vs.
The Commissioner Garhwal Region,
Dehradun and others
…Respondents.
AND

Contempt Petition No. 60/2003
Jal Kal Abhiyanta (Grade-D) Uttaranchal,
(Garhwal) Jal Sahsthan, Dehradun
…Petitioners.
Vs.
1. G.P. Bahuguna, Assistant Labour Commissioner
Dehradun.
2. Virendra Singh Chauhan
…Respondents.

Sri R.K. Raizada and Sri Rakesh Thapliyal, learned counsel for the petitioners/employer.
Sri Gopal Narayan learned counsel for the workman.
Sri J.P. Joshi learned Standing Counsel for respondent No.1 in the contempt petition.

Date: 17th November 2003.

ORAL JUDGMENT: **(Per: Hon'ble Irshad Hussain, J.).**

Sri Virendra Singh Chauhan was appointed as Tubewell Operator on 12.3.1991 on monthly salary of Rs. 900/- by General Manger, Garhwal Jal Sansthan, Dehradun and his service was terminated on 11.1.1996. On a dispute

raised by him the State Government referred the matter to the Labour Court on the question, whether the termination of the service of the workman Virendra Singh Chauhan is un-just and incorrect, and if so, to what relief he is entitled. In this adjudication case No. 1 of 1997 the Labour Court gave an award on 31.7.1997 holding that the termination of the service was illegal for non-compliance of section 6-N of the U.P. Industrial Disputes Act, 1947 (for short 'the Act') in as much as the workman was not given any notice and he was also not paid any compensation as contemplated under the said provision of 'the Act'. The Labour Court directed reinstatement with full back wages together with cost of the litigation assessed at Rs. 500/-. The Award has been challenged in the Civil Misc. Writ Petition No. 2795(M/S)/2001.

2- The Labour Court by the said award rejected the contention of the respondents (petitioners) that the workman was not in their employment because with effect from 1.4.1994 the upkeep and maintenance of the tube-wells had been given to M/s Shakti Electricals and Engineering Works, the respondent No. 3 under a contract and the said respondent No.3 had run and maintained the various tube-wells till 15-1-1996 when the contract was finally terminated. The petitioners claimed that the finding recorded by the Labour Court that the employee continued to work on the two tube-wells of village Mohabewala tube-well No.2 and of village Ajabpur Kalan under the petitioners establishment and that these two tube-wells were not given on contract, is without jurisdiction and is not based on proper and fair appraisal of the evidence. The Labour Court also recorded the finding that these two tube-wells were also not subsequently given under a contract to M/s D.D. Enterprises and these two tube-wells continued to be maintained and run by the petitioners establishment. The petitioners contended that provision of section 6-N of 'the Act' was not attracted and the services of the workman could not be treated to have been terminated.

3- In the counter affidavit the employee reiterated that since he had worked from 12-3-91 to 11-1-96 his services were terminated without complying the provision of section 6-N of 'the Act', the award in question is perfectly just and proper and the petition challenging the same is liable to be dismissed.

4- In the Civil Misc. Writ Petition No. 2183 (M/S)/2001 the order of the Labour Court challenged is dated 27.5.1999. It was passed under section 6-H (2) of the U.P. Industrial Disputes Act, 1947 read with section 33-C(2) of the Industrial Disputes Act, 1947 on the application of the workman to direct

the employer to pay the arrears of salary amounting to Rs. 28,690/- for the period 1.8.1998 to 31.3.1999. In writ petition challenging the award dated 31.7.1997, the award pertaining to the back wages only was directed to remain in abeyance by interim order dated 23.3.1998 and, therefore, he urged that he was entitled to salary with effect from the date he was reinstated in perusance of the award. According to the employer he was reinstated on 25-8-1998. Since he joined on 25-8-1998 he was directed to be paid salary by the Regional Deputy Labour Commissioner at the rate of last drawn salary of Rs. 2525/- per month and in perusance thereof he was paid salary at the said rate up to the month of July 1998, but thereafter no salary was paid to him. Considering these broad features and the import of the award dated 31.7.1997 the said application preferred by the employee was allowed per order dated 27-5-1999 by the Presiding Officer, Labour Court and the employers were directed to pay the arrears amounting to Rs. 20,200/- at the said rate for the period 1.8.1998 to 31.3.1999 together with cost assessed at Rs. 500/-.

5- The above order has been challenged on the ground that the order in Civil Misc. Case No. 25/1999 could not have legally been passed under the provisions of 'the Act' as mentioned in the impugned order and also because in the writ petition challenging the award the court by order dated 7.5.1999 modified the interim order dated 23.3.1998 and directed that the workman shall be paid wages with effect from 23.4.98 on the basis of the last wages drawn when his services were terminated. Subsequently on 14.6.1999 the court passed another interim order whereby the operation of the order (award) dated 27-5-1999 passed was suspended.

6- In Civil Misc. Writ Petition No. 1585/2001 the workman Virendra Singh Chauhan made a prayer for quashing of the impugned order dated 7.12.1999 (Annexure-5) passed by the Commissioner, Garhwal Region, Dehradun, the respondent No. 1 and for a writ, order, or direction in the nature of mandamus directing the respondents to implement the recovery certificate (Annexure-4) dated 18-8-1999 issued by the Deputy Labour Commissioner, Garhwal Region, Dehradun (respondent No.3) to the Collector (respondent No.2) for arrears of wages amounting to Rs. 7575/-. The workman urged that the Commissioner Garhwal Region, Dehradun has had no jurisdiction to stay the recovery of the arrears of wages by saying that the wages could only be paid at the lump sum

rate of Rs. 900/- per month instead of at the rate of 2525/- per month as directed by the Deputy Labour Commissioner.

7- Contempt petition No. 60/2003 was filed by the employers against Sri G.P. Bahuguna, Assistant Labour Commissioner, Dehradun and the workman on the ground that the recovery certificate as referred above was issued in defiance of the interim/stay order of the court passed on 14.6.1999, whereby the operation of the award dated 27.5.1999 was suspended. The petitioners, therefore, alleged that the respondents have committed contempt of the court.

8- The respondent No. 1 filed counter affidavit wherein it has been averred that the deponent has not flouted the order of the Court because the order dated 27.5.1999 of the Labour Court pertain to the wages of the period from 1.8.1998 to 31.3.1999 whereas the recovery certificate relate to the arrears of wages of the period from 1.4.1999 to 30.6.1999 amounting to Rs. 7575/- regarding which there was no stay or any interim order of the court. Therefore, the contempt petition is liable to be dismissed.

9- The submissions of the learned counsel for the parties gave rise to following points for consideration and decision of the petitions:-

(1) Whether the finding of the Labour Court that the workman continued to be in the employment of Garhwal Jal Sansthan till 11.1.1996 and his services were terminated in contravention of the provision of section 6-N of ‘the Act’ is incorrect as not being based on the evidence on record?.

(2) Whether the Labour Tribunal has had no jurisdiction to go into the question whether the workman was the employee of the contractor M/S Shakti Electricals and Engineering Works, Dehradun and it traveled beyond the scope of the reference made to it?.

(3) Whether the Labour Court could not have taken cognizance of the application (Misc. Case No. 25/1999) preferred by the workman seeking recovery of arrears of wages by invoking the provisions of Section 6 –H(2) of ‘the Act’ read with section 33-C(2) of the Industrial Disputes Act, 1947 and the order directing recovery dated 27.5.1999 passed by the Presiding Officer, Labour Court, is

illegal and unjust and the workman was not entitled to the wages at the rate of Rs. 2525/- per month?

(4) Whether the order dated 7.12.1999 passed by the Commissioner Garhwal Region, Dehradun staying the operation of the recovery certificate dated 18.8.1999 in regard to the balance of wages amounting to Rs. 7575/- is illegal and without jurisdiction and the recovery certificate is required to be legally enforced?.

(5) Whether the respondents of the contempt petition have committed contempt of the order of the court dated 14.6.1999?.

10- **Point Nos. 1 and 2:** The learned counsel for the petitioners/employer argued that the Labour Court failed to appreciate the evidence of the parties in proper perspective and thereby recorded an incorrect finding that the services of the workman were terminated without notice and compensation on 11.1.1996. Attention has been drawn to the documentary evidence to show that the tube-wells of the petitioners have been given to the contractor M/S Shakti Electricals and Engineering Works for running and up-keep with effect from 1.4.1994 and that the workman was not under their employment. Having gone through the impugned award dated 31.7.1997 (Annexure –4 to the Civil Misc. Writ Petition No. 2795/2001) it is evident that the petitioners have no-where disputed the claim of the workman that he was appointed as a pump-operator by the petitioners on 12.3.1991 on lump sum salary of Rs. 900/-. Specific averment to this effect was made by the workman in paragraph Nos. 5 and 6 of his written statement but in the rejoinder (Annexure C.A. 1) the petitioners merely stated that the averments of the written statement of the workman are not commented upon as the same being matter of record. Although the workman reiterated the same thing in his statement on oath but still Sri L.M. Juyal, Junior Engineer of the petitioners examined as witness in the case did not dispute and challenge the claim of the workman. The workman also gave evidence to the effect that he continued to be in the employment of the petitioners till his services were terminated on 11.1.1996. In the face of specific case as set-up and evidence given, the burden to prove that the workman ceased to be in their services with effect from 1.4.1994, was on the petitioners. Since the petitioners have set-up the case that from this date the maintenance and up-keep of all their tube-wells was taken up under a contract by M/S Shakti Electricals, positive and reliable evidence was required to be adduced

from their side to establish that the workman did not thereafter operate any tube-well under their control. The petitioners have utterly failed to establish this fact, as is evident, by the evidence adduced before the Labour Court.

11- The reason for the above inference is that the petitioners have filed five documents, per list, 13-B(1) which relate to the contract with M/s Shakti Electricals and also pertain to the termination of the contract on 15.1.1996 and thereafter giving of the contract to another firm in the name and style M/S D.D. Enterprises. One of the document relate to the policy decision dated 16.5.1995 in regard to giving of the tube-wells for maintenance and up-keep in the private sector on contract basis. The petitioners also furnished relevant documents of tender invitation etc for the maintenance and up-keep of the tube-wells. From the documents it was found that in the tender notice (Ex.E.2) no description of the tube-wells and their location was given. In the tender submitted by M/s Shakti Electricals the said description was also missing. Not only this, in the contract document itself no description of the tube-wells or their location was given against relevant column No.1 and also other column Nos. 2 to 5, which were meant to give other description of the contract work. The contract, according to the petitioners given to M/s Shakti Electricals remained effective till 15.1.1996. Subsequently the contract was given to M/s D.D. Enterprises and contract document (Ex.E-10) was executed. This contract document however contain list of 13 tube-wells which were subject matter of the contract. The Labour Court on the basis of the material on record was of the view that on the basis of the contract document of this firm no presumption could be drawn that all such tube-wells were also given for up-keep and their running to M/s Shakti Electricals. The inference drawn by the Labour Court was just and proper and it could not safely be accepted that the Labour Court did not properly consider and appraise the evidence of the petitioners.

12- It is also of significance that letter dated 25.4.1994 (Ex.E-7) sent by the petitioners to M/s Shakti Electricals indicating that their tender for up-keep and maintenance of 11 tube-wells for the period from 1.5.1994 to 31.3.1995 has been accepted. The description of 11 tube-wells was given in this letter and this exclude the tube-well No-2 of Mohabewala and tube-well of village Ajabpur Kalan. The letter clearly indicate that these two tube-wells were not the subject matter of contract of the said firm and these continued to be in the control and maintenance of the Garhwal Jal Sansthan. The contract was further extended

for the financial year 1995-1996 per order dated 24.3.1995 (Ex.E-8) which also do not indicate that these two tube-wells were given on contract. Not only this, genuineness of the log-books of these two tube-wells (Ex E-8 and E-9) filed by the workman was not disputed by the witness of the petitioners examined in the case. The workman also gave evidence on oath that he continued to operate these two tube-wells and has filled reports to the Junior Engineer and Assistant Engineer, Garhwal Jal Sansthan from time to time. These reports dated 15.4.1994, 4.7.1994, 19.7.1994 and 23.11.1994 (Exs. W-1 to W-5) were also filed on the record. The workman also furnished a certificate of the Gram Pradhan of Mohabewala, dated 24.10.1995 (Ex. W-7) to the effect that the workman had been working on the tube-well regularly. Further Sri L.M. Juyal, the witness of the petitioners categorically admitted that in the letter dated 25.4.1994 (Ex. E-7) sent to the contractor in regard to the contract for up-keep and maintenance, the said tube-well No.2 of Mohabewala and tube-well of village Ajabpur Kalan do not find place in the list of the tube-wells. Therefore, there was overwhelming evidence on record to prove that these two tube-wells were not given on contract to M/s Shakti Electricals and that the workman Virendra Singh Chauhan continued to work as operator under the employment of the Garhwal Jal Sansthan till his services were terminated on 11.1.1996. The finding of fact as recoded by the Labour Court is based on evidence. Therefore, it can not by any reasoning be termed as improper and unfair and liable to be interfered with by this Court.

13- The question whether the workman was the employee of the contractor was ancillary to the reference made to the tribunal regarding the validity of the termination of the services and therefore the tribunal had to enter into said question and it can not be accepted that it travelled beyond the scope of reference to record the finding in favour of the workman. The decision of the Apex Court in the matter of **Indian Farmers Fertilizer Corporation Ltd. Vs. Industrial Tribunal I, Allahabad and others; 2002 Supreme Court Cases ((L & S) 421** pressed into service by the learned counsel for the workman is an authority to support the stand of the workman. In the reported case the reference was restricted to the fact that the services of the workman had been justly terminated or not. In the case a question was raised that the workmen were not the employees of the appellant. The tribunal entered into the controversy whether they were the employees of the appellant or not. The

employer being aggrieved from the approach and the award contended that the tribunal traveled beyond the scope of the reference. The Apex Court held that it was necessary for the tribunal to go into the said question also and it had not travelled beyond the scope of the reference. The reported decision thus shuts the argument convassed to the contrary on behalf of the petitioners.

14- In view of above I come to a definite conclusion that the finding recorded by the Labour Court that the workman Virendra Singh Chauhan was in the employment of Garhwal Jal Sansthan, Dehradun from 12.3.1991 and his services were terminated without notice and compensation in contravention of the provision of Section 6-N of 'the Act', is perfectly just and correct.

15- Both these points are answered accordingly in favour of the workman.

16- **Point No.3:** In the Misc. Writ Petition No. 2795/2001 by interim order dated 23.3.1998 it was provided that the award of the Labour Court pertaining to the back wages only shall remain in abeyance. The interim/stay order was however modified on 7.5.1999 as below:-

> " Heard learned counsel for the parties and perused the affidavits between the contesting parties.
>
> The interim order dated 23.3.1998 is modified and it is provided that the impugned award dated 31.7.1997 passed in adjudication case no.1 of 1997 shall remain stayed provided the petitioners reinstate respondent no.1 and pay him wages from the date of the award in accordance with the provisions of Section 17B of the Industrial Disputes Act. The wages from the date of the award i.e. 31.7.1997 till dated 23.3.1998 shall be deposited within three months with the Labour Court and the requisite amount being deposited, the same shall be invested in Term Deposit Scheme, with the nationalized bank and shall continue to remain in deposit till further orders. In so far as the wages w.e.f. 23.4.1998 are concerned, the payment shall be made to the respondent no.1 on the basis of the last wages drawn when his services were terminated. The same monthly wages shall be paid to him month to month. It will be opened for the petitioner to take work or not from him."

17- From the above modified order it is evident that it was directed that the employer shall pay to the workman the last wages as were drawn at the time of the termination and these were to be paid with effect from 23.4.1998. The workman in the adjudication case No. 1 /1997 has set-up the plea that he was initially appointed on lump sum salary of Rs. 900/- per month. However he had no-where urged that he was getting the same salary when his services were terminated on 11-1-1996. When there was order of the court as stated above the workman was entitled to receive the wages at the last drawn rate and therefore the competent authority, Deputy Labour Commissioner, Garhwal Region has had the authority to consider this aspect of the matter and direct the payment of the same to the workman in compliance of the court's direction. Perusal of the order dated 27-5-1999 passed by the Presiding Officer, Labour Court reveal that the Deputy Labour Commissioner has under the provisions of section 6-H(1) of 'the Act' initiated recovery of arrears of the wages after considering the evidence before him at the rate of Rs. 2525/- per month and the workman was even paid the salary at the said rate up to the month of July 1998. This factual aspect has not been disputed by the petitioners/employer. When the wages of the period from 1-8-1998 were not paid, the workman had no alternative but to file Misc. application No. 25/1999 and the Labour Court in exercise of powers under section 6-H (2) of 'the Act' read with section 37-C(2) of the Industrial Disputes Act, 1947 passed the order on 27-5-99 directing the payment of arrears of wages amounting to Rs. 20,200/- at the said rate of Rs. 2525/- per month for the period 1.8.1998 to 31.3.1999 together with costs. The order was passed on merit after giving an opportunity to the petitioners/employer to adduce their evidence in the matter and since the same is speaking one based on consideration of the relevant aspects and the evidence, it can not be argued that the said order is without jurisdiction. In the face of the facts of the case the decision of the Allahabad High Court in the matter of **M/s Niranjan Lal Bhargava & Co. Vs. Presiding Officer, Industrial Tribunal (I), Allahabad; 1974 (29) F.L.R. 193** pressed into service by the learned counsel for the petitioners/employer has no application here. The reason is that in the reported case it was held that when the subject matter of reference under the provisions of U.P. Industrial Disputes Act, 1947 was revision and refixation of the wages the tribunal was not competent to adjudicate with regard to dearness allowance regarding which the petitioner has

had no opportunity of adducing appropriate evidence before the tribunal. On the facts of the case it was stressed that every point at issue must be squarely placed in full gaze of the parties and adequate opportunity be afforded to them to produce the relevant material and evidence and then alone a decision can be tendered by the competent tribunal. In the instant case as is evident from the order dated 27-5-1999, the opportunity to adduce the evidence to the petitioners/employer was also afforded and they despite time given failed to produce pay-sheets in regard to the rate of the wages. In other words the principle of natural justice was observed in letter and spirit in taking the decision by giving opportunity to the parties to adduce evidence in the matter and, therefore, the same can not be disturbed and set aside.

18- In view of above it is evident that the order dated 27-5-1999 is just and proper and the workman was rightly directed to be paid wages at the rate of Rs. 2525/- per month in compliance of the interim order of the court dated 7.5.1999. The point is answered accordingly in favour of the workman.

19- **Point No. 4:** In Civil Misc. Writ Petition No. 1585/2001 the order of the Commissioner Garhwal Region, Dehradun dated 7-12-1999 has been challenged. It is not shown in the order as to under what provision of 'the Act' the said order was passed and therefore the same can not be said to be just and proper. It has been found above that the workman was entitled to wages last drawn by him at the rate of Rs. 2525/- per month and therefore the Deputy Labour Commissioner, Garhwal Region, Dehradun was justified in passing an order dated 18-8-1999 in regard to recovery of balance wages amounting to Rs. 7575/- and the operation of the same could not have legally been stayed by the Commission Garhwal Region. Therefore, the impugned order dated 7.12.1999 is illegal and without jurisdiction and the same is liable to be quashed. The order passed by the Deputy Labour Commissioner on 18.8.1999 is therefore fit to be implemented so as to effect the recovery of the arrears of wages.

20- The point is answered in favour of the workman.

21- **Point No.5:** To consider the merit of contempt petition it need to be mentioned that the order passed by the Presiding Officer, Labour Court on 27.5.1999 pertain to the recovery of arrears of wages from 1.8.1998 to 31.3.1999. Operation of this order was suspended by interim order dated 14.6.1999. The contemner Sri G.P. Bahuguna, Assistant Labour

Commissioner, Dehradun in his affidavit rightly urged that the effect of interim order dated 14.6.1999 was that the recovery of the arrears of wages of the above mentioned period i.e. 1.8.1998 to 31.3.1999 was stayed and whereas by the order dated 6.7.1999 the recovery was directed for wages, amounting to Rs. 7575/-, for the period from April 1999 to June 1999. Therefore, question of contempt of the order of the court dated 14-6-1999 does not arise and the contempt of the order of the court. The notices are therefore discharged.

22- The point is also answered in favour of the respondents.

23- In view of the above answers to the points raised in these petitions, the Civil Misc. Writ Petition Nos. 2795(M/S)/2001; 2183(M/S)/2001 and Contempt Petition No. 60/2003 being devoid of merit are liable to be dismissed. These petitions are dismissed. No order as to costs.

24- Civil Misc. Writ Petition No. 1585(M/S)/2001 preferred by the workman Virendra Singh Chauhan is allowed and the impugned order dated 7.12.1999 passed by the Commissioner, Garhwal Region, Dehradun (Annexure-4) is quashed. The respondents are directed to implement the certificate (Annexure-4) dated 18.8.1999 for recovery of arrears of wages amounting to Rs. 7575/-. No order as to costs.

(Irshad Hussain, J.)

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